

**United States Postal Service and Albert White. Case
12-CA-10834(P)(1-2)**

30 April 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

Upon charges filed on 4, 25, and 26 August 1983,¹ by Albert White, herein called the Charging Party, and duly served on United States Postal Service, herein called the Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 12, issued a complaint and notice of hearing 5 October alleging that the Respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the National Labor Relations Act, as amended.

The complaint alleges in essence that the Respondent, by its agent and supervisor Wayne Wood, on or about 8 July directed obscenities to an employee because of his filing of grievances and EEO complaints; threatened to evict an employee from the Respondent's facility because of his filing of grievances and EEO complaints; threatened an employee with unspecified reprisals because of his filing of a grievance; and, on or about 16 July, threatened to suspend an employee and threatened to discharge an employee if he did not transfer out of his present position. The complaint also alleges that the Respondent, by its agent and supervisor, C. R. Munnell, on or about 18 August threatened to discharge an employee if he did not stop filing grievances and EEO complaints. The complaint further alleges that the Respondent, by its agent and supervisor, Wayne Wood, on or about 9 July caused the police to escort the Charging Party out of the Respondent's facility and that the Respondent on or about 29 July suspended the Charging Party for 7 days because of his union and/or protected concerted activities. The complaint alleges that by the above conduct the Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act and discriminated with regard to the terms and conditions of employment of employees and thereby committed unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act and within the meaning of the Postal Reorganization Act. Thereafter, the Respondent filed an answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

¹ Hereafter all dates refer to 1983 unless noted otherwise.

Subsequently, on 23 January 1984 the Respondent filed a Motion for Summary Judgment and a supporting memorandum. On 10 February 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Respondent's Motion for Summary Judgment should not be granted. Counsel for the General Counsel filed a response to the Notice to Show Cause 21 February 1984.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following

Ruling on the Motion for Summary Judgment

In its Motion for Summary Judgment and its supporting memorandum, the Respondent contends, inter alia, that the unfair labor practice allegations should be deferred for processing through the grievance-arbitration procedure contained in its collective-bargaining contract.²

The Respondent argues that the Board should overrule its policy enunciated in *General American Transportation Corp.*, 228 NLRB 808 (1977), of not deferring charges involving allegations of 8(a)(1) and (3) violations. The Respondent argues that the Board should reinstate its earlier policy of deferring such charges as set forth in *National Radio Co.*, 198 NLRB 527 (1972).

The General Counsel does not dispute the Respondent's assertion that the unfair labor practice allegations come within the scope of the binding grievance-arbitration procedure established by the parties' collective-bargaining contract. The General Counsel notes that the Board in *United Technologies Corp.*, 268 NLRB 557 (1984), has reversed *General American Transportation* and now finds it appropriate to defer allegations of 8(a)(1) and (3) violations to the parties' grievance-arbitration procedure. The General Counsel asserts that the Charging Party is willing to file a grievance concerning the allegations set forth in the complaint. However, the General Counsel contends that the Respondent's motion should be denied. Instead, the General Counsel contends that the case should be remanded to the Regional Director for issuance of an order withdrawing the complaint and deferral of the

² According to documents submitted by the Respondent and not disputed by the General Counsel, the collective-bargaining contract with the American Postal Workers Union contains a grievance-arbitration procedure which culminates in "final and binding" arbitration and which defines a grievance as "a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment . . . [including, but not limited to,] the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of . . . [the contract]."

charge provided that the Respondent will waive the time-limitations provisions of the grievance-arbitration clauses of the contract.

We agree that the unfair labor practice allegations here should be deferred to the parties' grievance-arbitration procedure.

As noted above, in *United Technologies Corp.*, we held that the policy expressed in the majority opinion in *General American Transportation Corp.* "ignore[d] the important policy considerations in favor of deferral" and that the policy expressed in the majority opinion in *National Radio Co.* "deserve[d] to be resurrected and infused with renewed life" (at 559). Accordingly, we overruled the policy expressed in *General American Transportation Corp.* of declining to defer unfair labor practice allegations involving violations of Section 8(a)(1) and (3) and Section 8(b)(1)(A) and (2) of the Act. In so doing, we noted that the facts of the *United Technologies Corp.* case, which involved an allegation of an 8(a)(1) violation, made the case "eminently well suited for deferral" (at 560).

We believe that the present case involving allegations of 8(a)(1) and (3) violations is similarly well suited for deferral. We note that no one here disputes that the unfair labor practice allegations fall within the scope of the contract's binding grievance-arbitration procedure. While some of the alleged misconduct involves threats directed to employees who had filed grievances, we find this insufficient to conclude that the use of the grievance-arbitration machinery here would be "unpromising or futile" or that the parties here will not effectively use their own procedure to resolve these matters. *United Aircraft Corp.*, 204 NLRB 879 (1972). We note that both the Charging Party and the Respondent have agreed to pursue this matter through the grievance-arbitration machinery. In these circumstances, consistent with *United Technologies Corp.*, we shall order that the Respondent's Motion for Summary Judgment be granted, that the unfair labor practice allegations be deferred to the parties' grievance-arbitration procedure, and that the complaint be dismissed.³ As in *United*

Technologies Corp., however, we shall retain jurisdiction for the purpose of entertaining a motion for further consideration upon a showing that either (a) the dispute has not been resolved in the grievance procedure or submitted to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.

On the basis of the entire record, the Board makes the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

United States Postal Service provides postal services for the United States of America and operates various facilities throughout the United States, including its facility in Fort Lauderdale, Florida, in the performance of that function. The Board has jurisdiction over the Respondent pursuant to Section 1209 of the Postal Reorganization Act, as amended.

II. THE LABOR ORGANIZATION INVOLVED

American Postal Workers Union, AFL-CIO, Broward County Area Local is a labor organization within the meaning of Section 2(5) of the Act.

CONCLUSIONS OF LAW

The unfair labor practice violations in the complaint should be deferred to the grievance-arbitration procedure established in the Respondent's collective-bargaining contract with the American Postal Workers Union, AFL-CIO.

ORDER

The Motion for Summary Judgment is granted, and the complaint is dismissed, provided that:

Jurisdiction of this proceeding is retained for the limited purpose of entertaining an appropriate and timely motion for further consideration upon a proper showing that either (a) the dispute has not, with reasonable promptness after the issuance of this Decision and Order, been either resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.

³The Respondent must, of course, waive any timeliness provisions of the grievance-arbitration clauses of the collective-bargaining agreement so that the Charging Party's grievance may be processed in accord with our Order.